

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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| JANE DOE, | : | 23-cv-00376-MSM |
| Plaintiff, | : | |
| | : | |
| | : | |
| vs. | : | United States Courthouse |
| | : | Providence, Rhode Island |
| | : | |
| | : | |
| BROWN UNIVERSITY and JOHN | : | Tuesday, May 28, 2024 |
| STILES, | : | 10:00 a.m. |
| Defendants. | : | |
| - - - - -X | | |

TRANSCRIPT OF CIVIL CAUSE FOR MOTION HEARING
BEFORE THE HONORABLE MARY S. MCELROY
UNITED STATES DISTRICT COURT JUDGE
VIA VIDEO CONFERENCE
EXCERPT OF PROCEEDINGS

A P P E A R A N C E S:

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| For the Plaintiff: | KATHRYNE HEMMINGS, ESQ. Grant & Eisenhofer P.A 123 Justison Street Wilmington, DE 19801 |
| For the Defendant: (Brown University) | STEVEN M. RICHARD, ESQ. Nixon Peabody LLP One Citizens Plaza, Suite 500 Providence, RI 02903-1345 |
| For the Defendant: (John Stiles) | J. RICHARD RATCLIFFE, ESQ Ratcliffe Harten Galamaga LLP 40 Westminster Street, Suite 700 Providence, RI 02903 |

Court Reporter: Lisa Schwam, CRR-RPR-RMR
One Exchange Terrace
Providence, RI 02903

1 28 MAY 2024

2 (VIA VIDEO CONFERENCE)

3 THE COURT: Okay. All right. Thank you.

4 So as you know, we have before the Court Brown
5 University's motion to dismiss the plaintiff's amended
6 complaint and the plaintiff's motion to dismiss the
7 counterclaim against her made by John Stiles. So I'm
8 going to start with Brown's motion.

9 First, Brown seeks to dismiss the plaintiff's
10 Title IX claims. Title IX mandates that no person
11 shall, on the basis of sex, be excluded from
12 participation in, be denied the benefits of, or be
13 subjected to discrimination under any education program
14 or activity receiving federal financial assistance.
15 Universities that accept federal funding like Brown
16 University have to comply with Title IX's requirements
17 which are enforceable by individual plaintiffs through
18 an implied private right of action.

19 And in *Davis vs. Monroe County Board of*
20 *Education*, the Supreme Court held that in certain
21 limited circumstances a university may be liable for
22 damages under Title IX for discrimination in the form
23 of student-on-student harassment. The First Circuit in
24 *Porto v. Town of Tewksbury* has accordingly developed a
25 five-part test for Title IX liability in cases of

1 student-on-student harassment. So the plaintiff must
2 show that he or she was subject to severe, pervasive or
3 objectively offensive sexual harassment by a school
4 peer, that the harassment caused the plaintiff to be
5 deprived of educational opportunities or benefits, that
6 the university knew of the harassment in its programs
7 or activities and that it was deliberately indifferent
8 to the harassment such that its response or lack
9 thereof is clearly unreasonable in light of the known
10 circumstances. Mere negligence is not enough, and the
11 plaintiff must demonstrate that the university was
12 deliberately indifferent to the known acts of sexual
13 harassment.

14 This is a high standard intended to permit -- I
15 just lost you all, I apologize. I can't find you.

16 MR. RICHARD: We can still hear you.

17 THE COURT: Okay. Sorry. I don't know what
18 happened. It's like day one on Zoom again.

19 The plaintiff alleges that Brown had actual
20 knowledge of the sexual assault against her by John
21 Stiles, and she reported it to the Title IX office in
22 writing in her first amended complaint. Accepting her
23 allegations as true, which I must at this stage, they
24 would meet the requirement that the sexual harassment
25 was severe, pervasive and objectively offensive because

1 she characterized Stiles' conduct as violent rape.

2 The plaintiff also alleges that Brown had actual
3 knowledge of ongoing severe retaliation as a result of
4 her Title IX complaint. Such acts of intimidation by
5 the Brown Lacrosse team and staff, the revealing of her
6 identity through court filings and harassing statements
7 and messages by fellow students. The plaintiff argues
8 that this is severe, pervasive and objectively
9 offensive harassment. The harassment has gone on for
10 two years and has negatively affected her ability to
11 attend and participate in her education and university
12 activities.

13 The plaintiff further alleges that her amended
14 complaint plausibly alleges that Brown unreasonably
15 responded to her reports of harassment and assault.
16 Specifically, she alleges that Brown failed to timely
17 investigate and make a determination regarding either
18 of her Title IX complaints. After she filed her second
19 complaint alleging retaliation by Stiles, Brown took no
20 action for almost a month and did not assign a Title IX
21 investigator for 28 days. In addition, Brown took 159
22 days to issue the investigative report related to the
23 first formal complaint which was over 90 days after
24 this Court ruled on Stiles' action successfully
25 challenging his suspension.

1 Similarly, Brown took 175 days to issue its
2 official findings and disciplinary recommendation as to
3 the plaintiff's first formal complaint which was over a
4 hundred days after Stiles was allowed to return to
5 campus. And Brown took 185 days to issue its official
6 finding as to Jane's second formal complaint of
7 retaliation by Stiles.

8 The plaintiff asserts that these delays are
9 objectively unreasonable and meet the pleading standard
10 to plausibly allege deliberate indifference. Indeed,
11 unjustified delays in responding to an alleged attack
12 may, in some instances, constitute deliberate
13 indifference. Brown, however, argues that even
14 accepting the plaintiff's facts as true, it cannot be
15 held to have acted with deliberate indifference;
16 instead, its process, they argued, was fair and
17 equitable.

18 At this early pleading stages, however, the
19 Court disagrees. The plaintiff has alleged specific
20 facts which, when accepted as true and viewed in the
21 light most favorable to her, set forth that the time
22 that elapsed between her reporting of the alleged
23 assault and resolution was an unjustified delay and
24 that in this time she suffered retaliation and was
25 denied educational opportunities. That is enough, if

1 only just enough, to state a plausible claim under
2 Title IX at the pleading stage. Whether the elapsed
3 time was truly unjustified or objectively unreasonable
4 is a question for a later stage of litigation.

5 The Court will therefore deny Brown's motion on
6 the Title IX claims, Count I and II. And the Court
7 also denies Brown's motion on the Rhode Island Civil
8 Rights Act claim, Count Six, because that claim is
9 analyzed in accordance with Title IX.

10 Turning now to the plaintiff's intentional
11 infliction of emotional distress claim. A plaintiff
12 making such a claim must demonstrate that the conduct
13 was intentional or in reckless disregard of the
14 probability of causing emotional distress. The conduct
15 must be extreme and outrageous. There must be a causal
16 connection between the wrongful conduct and the
17 emotional distress, and the emotional distress in
18 question must be severe.

19 Brown argues that its conduct cannot plausibly
20 be considered extreme and outrageous which the Rhode
21 Island Supreme Court has defined as so outrageous in
22 character and so extreme in degree as to go beyond all
23 possible bounds of decency and to be regarded as
24 atrocious and utterly intolerable in a civilized
25 community. Specifically, Brown argues that it

1 addressed the plaintiff's two complaints in her
2 freshman year against John Stiles that presented
3 challenging circumstances including a judicial order
4 reinstating John over Brown's objection. Both students
5 disagreed with and appealed Brown's determination of
6 the complaints, and Jane's dissatisfaction simply is
7 not the basis for an intentional infliction of
8 emotional distress claim. Further, Brown contends it
9 timely and reasonably complied with the plaintiff's
10 reports and requests in her subsequent year.

11 The plaintiff, on the other hand, alleges that
12 her amended complaint states a plausible claim for
13 intentional infliction of emotional distress because
14 she alleges that the Title IX process was delayed by
15 Brown where there only was a final determination after
16 the appeals process 273 days after the initiation of
17 the first formal complaint at which time John Stiles
18 had already graduated from Brown and was admitted to a
19 graduate school elsewhere effectively rendering any
20 discipline of Stiles by Brown meaningless and thereby
21 permitting Stiles to face, quote, absolutely no
22 consequences for his violent rape while Jane endured
23 the physical pain and trauma from his assault and
24 continued to suffer extreme retaliation by Brown
25 students and faculty as a result of her decision to

1 file a Title IX complaint.

2 The Court is persuaded that the 2022 First
3 Circuit decision of *Doe vs. Brown University* at 43
4 F.4th 195 which cautions against dismissal of the
5 intentional infliction of emotional distress claim in
6 this case at this early stage is instructive. Although
7 Brown may be correct that that case, which was at a
8 summary judgment stage, presented specific facts that
9 are distinguishable from the instant matter, the better
10 course is to consider the intentional infliction of
11 emotional distress claim when evidence or undisputed
12 facts are presented. The Court therefore denies
13 Brown's motion on Count III.

14 Finally, the plaintiff brings a negligence claim
15 and a negligence supervision claim. As to the
16 negligence claim, the duties that the plaintiff points
17 to mirror the contractual relationship she had with
18 Brown under Title IX policies and that Brown breached
19 these duties by failing to follow its own policies.
20 Because these alleged duties and breaches relate to
21 policies that are contractual in nature between Brown
22 and its students, they must be addressed in a contract
23 action, not a tort action.

24 Additionally, both of the plaintiff's
25 negligence-based claims are premised on a special

1 relationship between her and Brown. As noted in other
2 decisions in this district, the Rhode Island Supreme
3 Court has never recognized the university and students'
4 special relationship in this context and the Court
5 declines to do so here. The Court therefore grants
6 Brown's motion to dismiss on Counts IV and V.

7 The Court now turns to the plaintiff's motion to
8 dismiss the defendant, John Stiles', counterclaim for
9 defamation. Specifically, Stiles alleges that the
10 plaintiff made a false and defamatory statement when
11 she accused him of rape. He further alleges that the
12 plaintiff published this false statement to Brown by
13 setting it forth in her Title IX complaint, stating it
14 to the Title IX panel at the hearing and to the
15 Providence Police. Under Rhode Island law, a
16 defamation claim requires proof of a false and
17 defamatory statement concerning another, an
18 unprivileged publication to a third party, fault
19 amounting to at least negligence on the part of the
20 publisher and damages unless the statement is
21 actionable irrespective of specific harm or special
22 harm.

23 The plaintiff argues that Stiles' claim fails on
24 the falsity element and the privilege element.
25 Plaintiff's motion, however, fails on her falsity

1 argument. The well-pled facts from Stiles' pleading
2 must be accepted as true and, in doing so, the Court
3 finds that he has made a plausible case that the
4 statement that he sexually assaulted the plaintiff is
5 false. His facts are buttressed by an appendix that he
6 attached and made part of the pleadings which is at
7 ECF-35 which includes the plaintiff's contrasting
8 statements about what happened, her efforts to change
9 or control what witnesses reported and social media
10 photographs of her that would undermine her story of
11 trauma.

12 Regarding the question of privilege, the Court
13 first considers absolute privilege. Under Rhode Island
14 law, absolute privilege is afforded in the context of
15 judicial proceedings to encourage witnesses to come
16 forward and speak freely about civil or criminal
17 matters. The key is whether absolute privilege applies
18 to a particular communication is determining whether it
19 was made in the context of a judicial or a
20 quasijudicial proceeding.

21 The Rhode Island Supreme Court has not
22 determined whether a student disciplinary proceeding is
23 quasijudicial. Stiles, therefore, points to a
24 Connecticut case, *Khan vs. Yale University*, which held
25 that a student disciplinary proceeding involving a rape

1 allegation did not qualify as quasijudicial because it
2 did not contain procedural protections against
3 defamatory statements such as requiring the accuser to
4 testify under oath, submit to cross-examination, allow
5 the accused to call witnesses or to have counsel and in
6 addition to a failure to establish a record. Stiles
7 argues that the Title IX proceedings in this case were
8 similarly flawed.

9 The plaintiff argues that Rhode Island law
10 should consider a student disciplinary proceeding
11 quasijudicial and points to the case of *Ims vs. Town of*
12 *Portsmouth* which considered as quasijudicial
13 proceedings hearings that are conducted by
14 administrative bodies that make legal determinations or
15 otherwise have, quote, sufficient trappings of the
16 judicial process. Under either standard, however,
17 there are facts that need to be presented to determine
18 if the hearing here in this case should be considered
19 akin to a judicial process and thus allow for
20 absolutely immunity.

21 Next, the plaintiff claims qualified privilege.
22 Qualified privilege exists if the publisher makes the
23 contested statements in good faith and reasonably
24 believes that she or he have a legal, moral or social
25 duty to speak out or that to speak out is necessary to

1 protect either her own interests or those of third
2 parties or certain interests of the public. Unlike
3 absolute privilege, a qualified privilege may be lost
4 if the alleged defamatory statement is the product of
5 ill will or malice.

6 Mr. Stiles alleges that the plaintiff made the
7 allegedly false statement for, as she stated in her
8 formal Title IX complaint, quote, the express purpose
9 to have him expelled from Brown without conferral of
10 his bachelor's degree. Stiles argues that this
11 indicates that the plaintiff intended to seek
12 retribution against him. It therefore appears that in
13 accepting Stiles' allegations as true and viewing them
14 in the light most favorable to him, as the Court must
15 do at this stage, he plausibly alleges malice which
16 would defeat a claim of qualified privilege.

17 And finally, the plaintiff claims conditional
18 immunity under Rhode Island's anti-SLAPP statute which
19 is at Rhode Island General Laws 9-33-2. And the
20 statute involves matters of public concern. And Stiles
21 argues convincingly to this Court that these issues are
22 private matters as they only affected her and not the
23 community at large. The plaintiff made no allegation
24 that Stiles had assaulted any other woman on campus,
25 and indeed the purpose of Title IX was to ensure equal

1 access to educational opportunities. The plaintiff's
2 motion to dismiss John Stiles' counterclaim is
3 therefore denied.

4 Is there anything further at this stage?

5 MR. RATCLIFFE: No, your Honor. Thank you very
6 much.

7 MS. HEMMINGS: No, your Honor. Thank you.

8 MR. RICHARD: Nothing from Brown, your Honor.
9 Thank you.

10 THE COURT: Okay. We're in recess.

11 (Proceedings concluded; 11:26 a.m.)
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CERTIFICATION

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.


Official Court Reporter

June 24, 2024